

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

DRESSER-RAND COMPANY,)	
)	
Petitioner/Cross-Respondent)	No. 15-60474
)	
v.)	Board Case Nos.
)	03-CA-026543
NATIONAL LABOR RELATIONS BOARD)	03-CA-026595
)	03-CA-026711
Respondent/Cross-Petitioner)	03-CA-026943
)	

JUDGMENT

Before: JOLLY, CLEMENT, and OWEN, Circuit Judges.

THIS CAUSE came to be heard upon a petition filed by Dresser-Rand Company to review, and upon a cross-application filed by the National Labor Relations Board to enforce, an Order of the National Labor Relations Board in Board Case Nos. 03-CA-026543, 03-CA-026595, 03-CA-026711 and 03-CA-026943, reported at 362 NLRB No. 136 (June 26, 2015). The Court heard argument and considered the briefs and record filed in this cause. On September 23, 2016, the Court issued its opinion granting in part and denying in part Dresser-Rand's petition and denying in part and granting in part the NLRB's cross-application for enforcement. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Fifth Circuit that Dresser-Rand Company, Painted Post, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Suspending employees because of their union or protected, concerted activities.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) Rescind the May 1, 2008 suspension of Marion Cook.

- (b) Make Marion Cook whole for any loss of earnings and other benefits suffered by him as a result of his unlawful suspension, plus daily compound interest as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).
- (c) Within 14 days of the date of this Order, remove from its files any reference to the suspension of Marion Cook and, within 3 days thereafter, notify him in writing that this has been done, and that the discipline found unlawful will not be used against him in any way.
- (d) Compensate Marion Cook for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarter.
- (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board, or its agents, all payroll records and reports, and all such other records, including an electronic copy of such records, if stored in electronic form, necessary to determine the amount of backpay due under the terms of this Order.
- (f) Within 14 days after service by the Region, post at its facility in Painted Post, New York, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at its Painted Post, New York facility since November 23, 2007.
- (g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at testing to the steps that the Respondent has taken to comply.

ENTERED:

APPENDIX

NOTICE TO EMPLOYEES

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO
Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT suspend you because of your concerted protected activity or because of your union activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the May 1, 2008 suspension of Marion Cook.

WE WILL make Marion Cook whole, with interest, for any loss of earnings and other benefits he may have suffered as a result of the unlawful discrimination against him.

WE WILL, within 14 days from the date of the Board's Order, remove any references to the suspension of Marion Cook from our files and, WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful conduct will not be used against him in any way.

WE WILL compensate Marion Cook for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarter.

DRESSER-RAND COMPANY

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, D.C.
this 29th day of September, 2016